D.B. CIVIL CONTEMPT PETITION NO.240/2007
In
D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1432/2006

Suo Motu Vs. Mahendra Kumar Sharma

Date of Order :: September 14, 2007.

HON'BLE THE ACTING CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. A.K. Sharma for the contemnor-respondent.

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The instant suo motu contempt proceedings have been initiated against Mr. Mahendra Kumar Sharma, Deputy Registrar (Judicial) in following circumstances.

D.B. Civil Special Appeal (Writ) No.1432/2006 is filed by Union of India & Others against the judgment dated March 23, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition no.1833/2003 by which the appellants are directed to comply with the award dated February 18, 2002 rendered by the Central Industrial Tribunal within 30 days from the date of the receipt of certified copy of the said order and the labour department is directed to take prompt action on the applications filed by the concerned workman under Section 29 of the Industrial Disputes Act, 1947.

The appeal was placed before the Division Bench for preliminary hearing on May 21, 2007. The affidavit in reply in opposition was filed by the workman to the interim relief claimed by the appellants, but as the same was not on record, the matter was adjourned to May 22, 2007 with a direction to the office to place on record the reply affidavit

filed by the workman in opposition to the interim relief immediately. Though the matter was again notified for hearing on May 22, 2007 the reply affidavit filed by the respondent-workman in opposition to the interim relief was not placed on record. The Court noticed that this was not an isolated case where the Registry had failed to comply with the Court's direction in time. Under the circumstances, the Court issued notice by an order dated May 22, 2007 to Mr. Mahendra Kumar Sharma, Deputy Registrar (Judicial) to show cause as to why he should not be committed to contempt for having disobeyed the order dated May 21, 2007 because disobedience of the order dated May 21, 2007 had resulted into loss of precious time of the Court and the Court had not been able to deal with the matter though urgency was shown by the learned counsel for the appellants. The notice issued was made returnable on May 25, 2007.

Before the returnable date, Mr. Mahendra Kumar Sharma, Deputy Registrar (Judicial) submitted his reply pointing out that an application filed by the learned counsel for the appellant on May 7, 2007 in D.B. Civil Special Appeal (Writ) No.1432/2006 was registered as Inward No.14007 by the Inward Clerk and the concerned Junior Judicial Assistant, Mr. Bhim Singh had prepared a slip for listing the said application before the Court on May 15, 2007 after which the relevant file was sent with the slip by the above-named Junior Judicial Assistant to the cause-list section after which the appeal alongwith the said application was listed for orders before Court no.2 in

the main cause-list at Serial no.3. It was further stated in the reply that the result of the main cause-list dated May 15, 2007 of the Court no.2 was sent to the cause-list section with the remark 'OP' (Order Passed) but the relevant file of the appeal was not received back in the Registry and, therefore, it could not be known as to which order was passed by the Court on May 15, 2007. According to Mr. Sharma, Deputy Registrar (Judicial), a slip was received in the cause-list section from the Court Master for listing the appeal for admission hearing on May 18, 2007 which contained the number and name of the case as also the name of the learned counsels for the parties, on the basis of which the appeal was listed for admission hearing before the Court on May 18, 2007 in the supplementary cause-list. What was explained by Mr. Sharma was that in the meanwhile, on May 16, 2007, an application was presented by the counsel for the appellant before him at 10:00 a.m. which was inwarded as Sl. No.14668 by the Inward Clerk in the Stamp Reporter Section and the same was handed over alongwith other applications to the concerned Junior Judicial Assistant on May 17, 2007. It was further explained by Mr. Sharma that on May 16, 2007 as many as 361 documents which included applications, vakalatnamas, notices, replies, affidavits etc. pertaining to Writ Section were presented and inwarded and that on receipt of application no.14668, the concerned Junior Judicial Assistant, Mr. Bhim Singh placed the application in the file of the special appeal which was retained in the Court. What was mentioned in the reply filed by Mr. Sharma was that

the result of the cause-list dated May 18, 2007 was sent by the Court Master to the cause-list section with the remark 'Tom' (Tomorrow) against the special appeal which was listed at Serial no.17 in the supplementary cause-list but the relevant file was not sent to the Registry. According to Mr. Sharma, on the basis of the result sent by the Court Master, the appeal was listed in the supplementary cause-list on May 21, 2007 at Serial no.2 though the relevant file was not received back in the Registry from the Court during the period between May 18, 2007 to May 20, 2007. It was mentioned in the reply that a reply to the prayer for interim relief on behalf of the respondent no.2 was presented b y Mr. N.K. Bhatt, learned advocate before him on May 16, 2007 at 12:10 pm and this reply was inwarded by the Inward Clerk dealing with the writ matters in the Stamp Reporter Section at Serial No.14769 on May 17, 2007 and was received by the concerned Junior Judicial Assistant, Bhim Singh on May 18, 2007. What was stated in the reply was that on May 17, 2007 as many as 194 documents including applications, vakalatnamas, affidavits, replies etc. were presented and inwarded by the Inward Clerk of the writ cases and that after inwarding the presented documents, the same were sorted out and passed on to the concerned Junior Judicial Assistant. It was also informed by filing the reply that as informed by Mr. Bhim Singh, no action on the above-referred-to reply submitted by the respondent no.2 vide Inward No.14769 dated May 17, 2007 could be taken as neither the next court date was mentioned on the said reply nor the relevant file of

the above-noted special appeal was received back in the office. According to the reply, the result of the supplementary cause-list dated May 21, 2007 was sent back by the Court Master direct to the cause-list section with the remark 'Tom' (Tomorrow) against the above-noted special appeal which was shown at Serial No.2 of the said supplementary cause-list dated May 22, 2007 at Serial no.5. It was claimed by Mr. Sharma in his reply affidavit that the case file of the appeal was neither sent to the office on May 21, 2007 nor the order/direction given by the Court was brought to his notice and that the file of the appeal was retained by the Court Master from May 15, 2007 to May 22, 2007 and the fact that the Court Master had retained the file of appeal in the court-room from May 15, 2007 to May 22, 2007 was also not brought to the notice of the Court. It was asserted by him in his affidavit in reply that the direction given by the Court to place on record the reply affidavit filed by the workman in opposition to the interim relief was never communicated to him nor did it come to his knowledge otherwise and if the said direction had been brought to his notice, he would have complied with the same without giving any cause for complaint about non-compliance of the Court's order. According to him, in view of the order passed by the Court on May 22, 2007, he asked the concerned Junior Judicial Assistant and the Administrative Officer (Judicial) to explain the factual position about the reply to the interim relief filed on behalf of the respondent no.2 not being placed on record, pursuant to which, detailed note explaining the factual position jointly signed by Mr.

Bhim Singh, Junior Judicial Assistant and Mr. N.K. Dadhich, Administrative Officer (Judicial) dated May 22, 2007 was submitted before him. Thus, by filing the reply it was pointed out by him that he had discharged his duties with devotion and not committed any wilful disobedience of the direction issued by the Court.

After going through the reply filed by Mr. Sharma, the Court passed an order dated May 25, 2007 indicating that if no date was mentioned on the reply, Mr. Sharma ought to have asked the advocate about the next date when the reply was submitted before him and that the lapse on the part of Mr. Sharma amounted to obstruction in the administration of justice and adjourned the matter to July 20, 2007.

This is how the contempt petition is placed for hearing before this Court. It may be mentioned that in the order dated May 25, 2007, the Court made reference to order dated May 18, 2007 rendered in D.B. Civil Special Appeal (Writ) no.422/2007 as well as order dated May 24, 2007 passed in D.B. Civil Special Appeal (Writ) No.955/2006 for coming to the conclusion that lapses on the part of Mr. Sharma had continued resulting into precious loss of time and unnecessary adjournments and therefore the Registry was directed to place papers of those two appeals before the Court for perusal.

In view of the above-referred-to order dated May 25, 2007, Mr. Sharma has filed an additional affidavit explaining the circumstances in which above-referred-to two orders were passed in two different appeals.

This Court has heard Mr. A.K. Sharma, learned counsel for the High Court and considered the record of D.B. Civil Special Appeal (Writ) No.1432/2006. This Court has also considered the record of D.B. Civil Special Appeal Nos. 422/2007 and 955/2006 which were directed to be placed before this Court for perusal vide order dated September 12, 2007. This Court has also taken into consideration the affidavits in the reply.

The fact that the file of D.B. Civil Special Appeal (Writ) No.1432/2006 was retained by the Court Master in the court-room and never sent to the Registry can hardly be disputed. Similarly, the fact that the direction dated May 21, 2007 was not brought to the notice of Mr. Sharma deserves consideration. The record does not indicate that there was any lapse or negligence on the part of Mr. Sharma in complying with the court's direction, more particularly, when the direction was never brought to his notice. On the facts and in the circumstances of the case, this Court is of the opinion that the disobedience of direction dated May 21, 2007 is not established. The requirement of law is that not only disobedience of the direction issued by the Court has to be firmly established but the disobedience has to be shown to be wilful. The record does not indicate that there was any disobedience of the direction issued by the Court on May 21, 2007 nor the same is shown to be wilful as far as Mr. Sharma is concerned. The record also does not indicate that Mr. Sharma, Deputy Registrar (Judicial) had not taken any effective steps in ensuring compliance of the orders passed by the Court nor it

is established that he was responsible for unnecessary adjournments of the cases. On the basis of record available, it is difficult for this Court to conclude that there is lack of efficiency and proper supervision on his part. From the reply affidavit and additional affidavit, we are satisfied that none of the acts of Mr. Sharma tantamounts to obstruction in the administration of justice and he cannot be said to have acted casually and mechanically. There was no lack of efficiency and proper supervision on the part of Mr. Sharma.

Under the circumstances, the observations made by the Court against Mr. Sharma in (i) order dated May 22, 2007 passed in D.B. Civil Special Appeal (Writ) No.1432/2006, (ii) order dated May 25, 2007 passed in the instant petition, (iii) the order dated May 18, 2007 passed in D.B. Civil Special Appeal (Writ) no.422/2007 and (iv) order dated May 24, 2007 passed in D.B. Civil Special Appeal (Writ) No.955/2006 are ordered to be expunged. The instant notice is ordered to be discharged. The suo motu proceedings accordingly stand disposed of.

(SATYA PRAKASH PATHAK),J. (J.M. PANCHAL), Actg.CJ.

Skant/-